

**OFFIT KURMAN, P.A.**

*Proposed Counsel to the Debtor*

590 Madison Ave Floor 6

New York, New York 10022

Phone: 212-545-1900

Jason Nagi, Esq.

Albena Petrakov, Esq.

-and-

300 E. Lombard Street,

Baltimore, MD 21202

Phone: 410.209.6400

Joyce Kuhns, Esq. (pro hac vice admission pending)

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

-----X	
In re:	: Chapter 11
	:
WICKAPOGUE 1 LLC,	: Case No. _____ ( )
	:
	:
Debtor	:
-----X	

**DECLARATION OF DAVID GOLDWASSER, CHIEF RESTRUCTURING OFFICER  
OF WICKAPOGUE 1 LLC UNDER LOCAL BANKRUPTCY RULE 1007-4**

David Goldwasser makes this declaration under 28 U.S.C. § 1746:

1. I am the managing member and president of FIA Capital Partners, LLC and have significant experience working as a Chief Restructuring Officer and manager of Chapter 11 debtors in the United States Bankruptcy Courts for the Eastern District of New York and the Southern District of New York.

2. I submit this declaration (the “**Declaration**”) pursuant to Local Bankruptcy Rule 1007 in the United States District Court for the Eastern District of New York in support of the voluntary Petition of Wickapogue 1 LLC (the “**Debtor**”).

3. The Debtor’s primary asset is improved real estate consisting of a 10,000 square foot residence located at 145 Wickapogue Road, Southampton, New York (the “**Property**”).

4. The Debtor is not a small business debtor within the meaning of § 101(51)(D) of the Bankruptcy Code.

5. The circumstances precipitating this bankruptcy filing are as follows:

a. The Debtor's defaulted on a Loan in the amount of \$5,750,000.00, consisting of a building loan in the amount of \$2,500,000.00 and a loan for the purchase of land in the amount of \$3,250,000.00 to allow the Debtor to acquire the underlying land and construct a property thereon for sale as a future residence (the "**Loan**"), which Loan was assigned to Blue Castle (Cayman) Ltd., the current secured lender (the "**Secured Lender**" or "**Blue Castle**").

b. After noticing the defaults under the Loan, Blue Castle initiated a foreclosure proceeding in the United States District Court for the Eastern District of New York on September 12, 2022 commencing Case No.2:22-cv-05488-GRB-LGD (the "**Foreclosure Action**").

c. All of the membership interests held by Nicole Gallagher in Wickapogue 1 LLC were pledged to the Secured Lender to secure her Guaranty of all obligations under the Loan. Due to Wickapogue 1 LLC's default under the Loan, Blue Castle directed its counsel to notice and schedule a public sale of the membership interests for January 12, 2023 (the "**Auction**"). Prior to the Auction, counsel for Debtor, guarantors and pledgor gave notice of their intention to present an Order to Show Cause to enjoin the Auction in state court (the "**State Court Action**"). At the hearing on the Order to Show Cause, the judge in the State Court Action entered a Temporary Restraining Order enjoining the Auction and setting a further hearing for February 9, 2023 on any further relief.

d. Blue Castle removed the State Court Action to the United States District Court for the Eastern District of New York on January 25, 2023, which was assigned 2:23-cv-

00561-HG (the “**Federal Court Action**”). After considering pleading filed and arguments of counsel at a hearing held on February 9, 2023, the court in the Federal Court Action denied the request for preliminary injunction, finding among other things, that the marketing of the Auction was commercially reasonable.

e. In a letter dated February 16, 2023, counsel to Secured Lender advised pledgor, Nicole Gallagher, that she no longer had the authority to exercise voting rights with respect to her membership interests in Wickapogue 1 LLC, as a result of her defaults under her pledge and guaranty, executed in connection with the Loan.

f. At the duly-conducted Auction held on February 17, 2023, Secured Lender placed a credit bid (the “**Credit Bid**”) for 100% of the membership interests in Wickapogue 1 LLC and became the successful bidder. Promptly thereafter, Secured Lender assigned all of its rights in its Credit Bid to its assignee, Wickapogue Beach LLC, which thereupon acquired all rights, title and interest in the Credit Bid and, on execution of a Transfer Statement and Instrument of Conveyance in UCC Sale, became the 100% holder of all membership interests in Wickapogue 1 LLC.

6. The Debtor filed this Chapter 11 bankruptcy case (the “**Bankruptcy Case**”) to facilitate a sale of the Property, free and clear of liens, judgments and encumbrances, under a plan of liquidation and to distribute net sale proceeds to creditors in the order of priority of their respective claims.

7. On March 21, 2023, I was appointed Chief Restructuring Officer of Wickapogue 1 LLC, by its new member Wickapogue Beach LLC, to facilitate the Bankruptcy Case.

8. No Trustee has been appointed in this Bankruptcy Case. No Committee has been appointed in this Bankruptcy Case. A Receiver was appointed in the Foreclosure Action but never

took control of the Property.

9. A true and complete copy of Official Bankruptcy Form 204 listing the creditors who have the 20 largest unsecured claims is incorporated in and attached to this Declaration as **Exhibit**

1.

10. A list of the holders of the 5 largest secured claims is set forth below:

<b>Creditor's Name</b>	<b>Creditor's Mailing Address</b>	<b>Date Debt was Incurred</b>	<b>Nature of Lien</b>	<b>Amount of Claim</b>
Blue Castle (Cayman) Ltd.	1688 Meridian Ave, 7th Floor Miami Beach, FL 33139	2/7/2020	First Mortgage	\$7,560,000.00
Title, LLC	821 Shades Space Creek Pkwy Birmingham, AL 35209	2/8/2021* 11/8/2021**	Second Mortgage* Subsequent Lien **	\$3,200,225.00
Title, LLC	821 Shades Space Creek Pkwy Birmingham, AL 35209	2/23/2021	Judgment	\$885,225.00
Title, LLC and St. Andrews Capital LLC	821 Shades Space Creek Pkwy Birmingham, AL 35209 and 1209 Orange Street Wilmington, DE 19801	2/23/2021	Judgment	\$715,225.00
Town of Southampton	116 Hampton Road Southampton, NY 11968	12/1/22 – 11/20/23 First half due 1/10/23	Priority lien for town and school tax	\$16,431.95

11. A true and correct copy of Official Bankruptcy Form 206 summarizing the Debtor's assets and liabilities is incorporated in and attached to this Declaration as **Exhibit 2**.

12. On the Petition Date, 100% of the membership interests in the Debtor were held by Wickapogue Beach LLC, a Delaware limited liability company.

13. George M. Gavalas, Esq., counsel for the Loan's guarantors, Mark and Nicole Gallagher, have represented that Mark Gallagher, also the spouse of Nicole, currently occupies the Property. By letter dated March 3, 2023, sent by overnight delivery to Mark and Nicole Gallagher, the Secured Lender stated that if Mr. Gallagher is occupying the Property he is a trespasser and directed him to vacate the Property, in broom-clean condition no later than March 8, 2023.

14. The books and records of the Debtor remain in the control of Nicole Gallagher, upon information and belief. Therefore, the information I have provided in paragraphs 9-11 above

is based upon information provided to me by the Secured Lender from its files and public records and, therefore, I cannot attest to its completeness or accuracy in all respects.

15. I am only aware of one action pending against the Property, the Foreclosure Action, which is now stayed under Section 362 of the Bankruptcy Code. I will authorize that a Suggestion of Bankruptcy be filed in that proceeding. In addition, I will authorize that a Suggestion of Bankruptcy be filed in the Federal Court Action.

16. In addition to the Property, the only other known asset of Debtor is an escrow account at Chase Bank containing protective advances from the Secured Lender, held in trust for Wickapogue 1, LLC, to cover the estimated administrative expenses of this Bankruptcy Case (the "Chase Account"). I am causing the transfer of all funds in the Chase Account to a checking account to be set up as a Wickapogue 1 LLC Debtor-in-Possession account at TD Bank, with an address at 461 8<sup>th</sup> Avenue, New York, New York 10001 (the "DIP Account").

17. As Chief Restructuring Officer of the Debtor, I constitute the management of the Debtor. My primary duties and responsibilities consist of: (i) conserving and maintaining the Property through its sale; (ii) disbursing appropriate expenses and reimbursement from the DIP Account; (iii) attending such meetings and hearings as are required; (iv) retaining bankruptcy professionals for the Debtor, including Offit Kurman, P.A., which I have retained as Debtor's bankruptcy counsel; and (v) facilitating the negotiation and prosecution of a plan of liquidation in this Bankruptcy Case.

18. All payment amounts estimated to be needed in the first 30 days of this Bankruptcy Case have been placed into the DIP Account by Secured Lender. There is no expectation of any payments from the DIP Account in the first 30 days except, as follows: \$30.00 in bank fees to TD Bank, and an estimated \$750.00 to PSGE Long Island for utilities. I have created a \$1,100.00

reserve for repairs and maintenance for the Property and a \$5,000.00 reserve for any additional, miscellaneous administrative expenses in connection with the chapter 11 case and/or the Property.

19. Pursuant to my retention agreement with the Debtor, I will be paid \$2,500.00 monthly for my Chief Restructuring Officer services through the closure of this Bankruptcy Case or upon my earlier termination by Wickapogue Beach LLC.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: New York, New York  
March 28, 2023

  
\_\_\_\_\_  
David Goldwasser

# Exhibit 1

Fill in this information to identify the case:

Debtor name Wickapogue 1, LLCUnited States Bankruptcy Court for the: Eastern District of New York  
(State)

Case number (if known): \_\_\_\_\_

☐ Check if this is an amended filing

## Official Form 204

**Chapter 11 or Chapter 9 Cases: List of Creditors Who Have the 20 Largest Unsecured Claims and Are Not Insiders**

12/15

A list of creditors holding the 20 largest unsecured claims must be filed in a Chapter 11 or Chapter 9 case. Include claims which the debtor disputes. Do not include claims by any person or entity who is an *insider*, as defined in 11 U.S.C. § 101(31). Also, do not include claims by secured creditors, unless the unsecured claim resulting from inadequate collateral value places the creditor among the holders of the 20 largest unsecured claims.

	Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim (for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
					Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured claim
1	Title, LLC Shades Space Creek Parkway Birmingham, AL 35209	Robert M. Bursky 68 South Service Road, Suite 100 Melville, NJ 11747	Judgment				\$2,600,000.00
2	Lisa Grossman c/o Bernard Elfassy 33 West Hawthorne Ave, Ste 200 Valley Stream, NY 11580	Bernard Elfassy 33 West Hawthorne Ave, Ste 200 Valley Stream, NY 11580	Loan/Confessed Judgment				\$1,600,000.00
3	Bryan Geffen 15-55 Bell Boulevard Miami Beach, FL 33139	Lawrence Spivak 160-01 Hillside Avenue Jamaica, NY 11432	Judgment				\$600,210.00
4	Title, LLC Shades Space Creek Parkway Birmingham, AL 35209	Robert M. Bursky 68 South Service Road, Suite 100 Melville, NJ 11747	Judgment				\$500,225.00
5	Lisa Grossman c/o Bernard Elfassy 33 West Hawthorne Ave, Ste 200 Valley Stream, NY 11580	Bernard Elfassy 33 West Hawthorne Ave, Ste 200 Valley Stream, NY 11580	Loan/Confessed Judgment				\$500,000.00
6	Swezey Fuel Co., Inc. c/o Nicholas J. Damadeo 27 West Neck Road Huntington, NY 11743	Nicholas J. Damadeo 27 West Neck Road Huntington, NY 11743	Money Judgment				\$85,000.00
7							
8							



Debtor

Name

Case number (if known)

	Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim (for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
					Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured claim
9							
10							
11							
12							
13							
14							
15							
16							
17							
18							
19							
20							

## Exhibit 2

**Fill in this information to identify the case:**

Debtor name Wickapogue 1, LLC

United States Bankruptcy Court for the: Eastern District of New York  
(State)

Case number (if known): \_\_\_\_\_

☐ Check if this is an amended filing

## Official Form 206Sum

**Summary of Assets and Liabilities for Non-Individuals**

12/15

**Part 1: Summary of Assets**1. *Schedule A/B: Assets—Real and Personal Property* (Official Form 206A/B)

## 1a. Real property:

Copy line 88 from *Schedule A/B* ..... \$ 12,000,000.00

## 1b. Total personal property:

Copy line 91A from *Schedule A/B* ..... \$ 20,760.00

## 1c. Total of all property:

Copy line 92 from *Schedule A/B* ..... \$ 12,020,760.00

**Part 2: Summary of Liabilities**2. *Schedule D: Creditors Who Have Claims Secured by Property* (Official Form 206D)

Copy the total dollar amount listed in Column A, *Amount of claim*, from line 3 of *Schedule D* ..... \$ 12,435,196.30

3. *Schedule E/F: Creditors Who Have Unsecured Claims* (Official Form 206E/F)

## 3a. Total claim amounts of priority unsecured claims:

Copy the total claims from Part 1 from line 5a of *Schedule E/F* ..... \$ 0

## 3b. Total amount of claims of nonpriority amount of unsecured claims:

Copy the total of the amount of claims from Part 2 from line 5b of *Schedule E/F* ..... + \$ 5,885,210.00

4. Total liabilities ..... \$ 18,320,406.30  
Lines 2 + 3a + 3b